

AIA[®] Document B151[™] – 1997

Abbreviated Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year)

BETWEEN the Architect's client identified as the Owner:
(Name, address and other information)

STATE OF SOUTH CAROLINA

and the Architect:
(Name, address and other information)

For the following Project:
(Include detailed description of Project)

OSE PROMULGATION OF CONTRACT REVISIONS

This document is for use in evaluating and commenting on South Carolina specific revisions and/or proposed revisions to AIA Contract Documents and published pursuant to license No. S28101, granted by The American Institute of Architects. Publication by the State of South Carolina is not to be construed as consent to further publication or as a publication in derogation of rights reserved by The American Institute of Architects.

This document is posted for the purpose of facilitating discussion of existing OSE required contract revisions. The OSE recognizes that this document will not be available for use after May 31, 2009.

The Owner and Architect agree as follows.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

§ 1.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Articles 2, 3 and 12.

§ 1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

The A/E's detailed schedule shall be submitted within fifteen (15) days of award of this contract. The A/E's schedule shall be consistent with and support the Project Milestone schedule as defined in paragraph 12.2.

§ 1.3 The Architect shall designate a representative authorized to act on behalf of the Architect with respect to the Project.

The designated representative shall not be changed without the Agency's written consent, which consent shall not be unreasonably withheld.

1.3.1 The A/E shall define the project organization as required in Paragraph 12.3. The consultants presented by the A/E as part of the selection process and approved by the Agency shall be the consultants used for the Project and shall be listed by name and discipline in Paragraph 12.3. The A/E shall not substitute any consultant without the consent of the Agency and the State Engineer, which consent shall not be unreasonably withheld.

1.3.2 Key personnel shall be listed as required in Paragraph 12.4. The A/E shall not substitute any Key Personnel without the consent of the Agency and the State Engineer, which consent shall not be unreasonably withheld.

§ 1.4

1.4 The services covered by this Agreement are subject to the time limitations contained in Section 11.5.1-Paragraph 12.2

1.4.1 The time of the contract shall begin at A/E Contract Award and shall end with the A/E's written report submitted at the end of the Contractor's Warranty Period as defined in the Contract for Construction.

ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 2.1

2.1 DEFINITION

The Architect's A/E's Basic Services consist of those described in Sections Paragraphs 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal civil, structural, mechanical, fire protection and electrical engineering services. For the purposes of this Agreement, "normal services" shall be those services reasonably required to provide complete design and construction period services for the Project in accordance with the requirements of the Manual, except as modified herein.

2.1.1 In addition to the services required by Paragraphs 2.2 through 2.6, the A/E's Basic Services shall include the following in the negotiated Basic Services fee:

2.1.1.1 Consistent with Paragraph 4.9, the A/E shall review and evaluate the information provided by the Agency and advise the Agency of any additional information required by the A/E for completion of the Project.

2.1.1.2 The A/E shall investigate existing conditions or existing facilities.

2.1.1.3 The A/E shall provide a preliminary seismic evaluation of the structures in accordance with Chapter 5 of the Manual.

2.1.1.4 The A/E shall provide Estimates of Construction Cost and obtain the Agency's written approval of the cost estimate at each phase of design.

2.1.1.5 The A/E shall provide the Agency with Record Plans, as required in Clause 2.6.14.3, showing any significant changes in the work made during construction based on marked-up prints, plans and other data furnished by the Contractor to the A/E.

2.1.1.6 The A/E shall prepare, on behalf of the Agency, applications and supporting documentation for all design-related and land-use permits, variances and approvals required by state and local governmental authorities having jurisdiction over the Project (e.g., grading, utilities, zoning and encroachment). The A/E shall revise applications and supporting documentation as required to resolve comments received from such governmental authorities, provided however that:

(1) The A/E's appearance as an expert, as well as the preparation of special drawings, visual aids and other materials and design work prepared solely for an appearance before local zoning boards or planning commissions shall be considered an Additional Service; and,

(2) Specialized permits, such as, but not limited to, permits required by Federal agencies are not included within the scope of Basic Services unless such permits are listed in Articles 12 or 13.

2.1.1.7 The A/E shall comply with the State Flood Plain Development requirements in accordance with **State Law** and the Manual.

2.1.1.8 The A/E shall comply with the State's requirements for telephone, data and communications equipment rooms as required by the Office of Information Resources.

2.1.1.9 The A/E shall comply with the energy conservation requirements of **State Law** and the Manual.

2.1.1.10 The A/E shall provide the local Building Official a complete set of Construction Documents to review and meet with the local officials to familiarize them with the proposed project.

2.1.1.11 The A/E shall meet with the local Fire Official to review proposed fire protection systems, provide the local Fire Official and the regional Deputy State Fire Marshal with a set of Construction Documents each. The A/E shall notify the local Fire Official and the regional Deputy State Fire Marshal of the time and place the fire protection and detection system(s) are to be tested.

2.1.1.12 The A/E shall provide the Agency and the OSE a letter of approval of fire protection systems shop drawings from the State Fire Marshal.

2.1.1.13 The A/E's mechanical engineer of record shall attend the testing of the fire protection and detection system(s) and provide the Agency and OSE the following:

(1) The installer's Certificate of Compliance with code requirements for installation and testing.

(2) The Fire Marshal's Inspection Report

(3) The Record of Training of users for Systems Operation.

2.1.1.14 The A/E shall prepare and distribute conference memoranda, meeting minutes, summaries of telephone conversations, documentation of site visits and inspection reports as required by the Agency to maintain a comprehensive record of the Project. The State's Project Number and Name shall be shown on all documents.

2.1.1.15 The A/E shall provide normal A/E services. Civil Engineering services, other than normal Civil Engineering, should be defined by the A/E and the agency for the project. Any services beyond the defined scope may be considered additional services. See Article 3.

§ 2.2 SCHEMATIC DESIGN PHASE

§ 2.2.1 The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

§ 2.2.2 The Architect shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Section 5.2.1.

§ 2.2.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project.

§ 2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

§ 2.2.5 The Architect shall submit to the Owner a preliminary estimate of Construction Cost based on current area, volume or similar conceptual estimating techniques.

2.2.6 The A/E shall submit, to the Agency and the OSE for review and approval, properly completed sets of Schematic Design Documents, in the number and form requested by the Agency and OSE Project Managers, including the SE-271, "Design/Construction Documents Transmittal Form", and the Estimate of Construction Cost.

§ 2.3 DESIGN DEVELOPMENT PHASE

§ 2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

~~§ 2.3.2 The Architect shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost.~~ Design Development Documents shall incorporate the accepted resolution of all Agency and OSE comments on the Schematic Design Document submittal.

2.3.2 The A/E shall submit, to the Agency and the OSE for review and approval, properly completed Design Development Documents, in the number and form requested, including the SE-271, "Design/Construction Documents Transmittal Form", and the Revised Estimate of Construction Cost.

§ 2.4 CONSTRUCTION DOCUMENTS PHASE

§ 2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

~~§ 2.4.2 The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.~~

2.4.1.1 The Construction Documents shall incorporate the final resolution of all review comments from the Agency, and OSE and other authorities having jurisdiction on the Design Development Document Submittal. The Construction Documents shall comply with the requirements of the Manual and shall be 100 percent complete for OSE Review.

2.4.2 The A/E shall coordinate with the Agency in the preparation and issuance of the Bid Documents.

2.4.3 The A/E shall advise the Agency of any adjustments to the Final Estimate of Construction Cost and submit a revised estimate to the Agency for approval. If the revised estimate indicates that the Final Estimate of Construction Cost, through no fault or direction of the Agency, exceeds the Project Construction Budget, the A/E shall discuss with and provide to the Agency, at no additional cost, recommendations and document revisions which reduce the Final Estimate of Construction Cost to within the Project Construction Budget. However, the A/E shall not be required to

perform such additional services at no cost to the Agency if the unfavorable estimate is the result of conditions beyond the A/E's reasonable control.

2.4.4 The A/E shall, on behalf of the Agency, prepare applications and submittals for the Agency's use in obtaining all normal design-related permits and approvals required by governmental authorities having jurisdiction over the project.

~~§ 2.4.3 The Architect shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.~~

2.4.5 The A/E shall submit, to the Agency and the OSE for review and approval, properly completed Construction Documents, in the number and form requested, including the SE-271, "**Design/Construction Documents Transmittal Form**", and the Revised Estimate of Construction Cost, to the Agency and the OSE for review and approval. The Agency shall submit a copy of the Agency's approval of the Final Estimate of Construction Cost to the OSE.

~~§ 2.4.4 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.~~

2.4.6 The review and approval of the Construction Documents by the Agency and the OSE shall not relieve the A/E of its responsibility for compliance with the requirements of the Manual, or with applicable statutes, regulations and codes, or for design deficiencies, omissions or errors.

§ 2.5 BIDDING OR NEGOTIATION PHASE

The Architect, following the Owner's approval of the Construction Documents and ~~of the latest preliminary estimate of Construction Cost~~, shall assist the ~~Owner~~ owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

2.5.1 Prior to advertisement for bids, the A/E shall submit to the Agency and the OSE a record copy of the Bidding Documents, which are to be issued to prospective bidders. The submittal to the Agency and the OSE shall include the SE-271, "**Design/Construction Documents Transmittal Form**" and the Final Estimate of Construction Cost signed by the Agency.

2.5.2 The A/E shall evaluate substitutions proposed by Bidders and make subsequent revisions to Bidding Documents by Addenda.

2.5.3 The A/E shall attend the Pre-Bid Conference and the Bid Opening and shall assist the Agency in obtaining bids and awarding and preparing construction contracts.

2.5.4 If the lowest bona fide bid exceeds the Agency's Construction Budget by less than 5%, and the Agency elects to award the Contract, the A/E shall, without additional charge to the Agency, assist in negotiations to reduce the bid amount to the level requested by the Agency, but not more than 10% below the Agency's established Project Construction Budget.

2.5.5 If the lowest bona fide bid exceeds the Final Estimate of Construction Cost by more than 5% and the Agency elects to continue the Project, the A/E shall, without additional charge to the Agency, modify the Contract Documents as necessary to bring the Project within the Project Construction Budget. The A/E shall be responsible for all its costs associated with the redesign and rebidding of the Project, including the reproduction of revised documents and fees for any new or revised permits based on the revised plans. However, the A/E shall not be required to perform such additional services at no cost to the Agency if the unfavorable bids are the result of conditions beyond the A/E's reasonable control.

2.5.6 If the Agency elects to terminate the Project, then this Contract is terminated in accordance with Article 8.

§ 2.6 CONSTRUCTION PHASE—ADMINISTRATION OF THE CONSTRUCTION CONTRACT

~~§ 2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the earlier of the issuance to the Owner of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work.~~

2.6.1 The A/E's responsibility to provide Basic Services for the Construction Phase under this Contract begins with the issuance of the SE-390, "Notice To Proceed", and ends twenty-one (21) days after the A/E certifies the Contractor's final Application for Payment, except that the A/E's Basic Services shall include the Warranty Inspection as described in Paragraph 2.6.19.

§ 2.6.2 The Architect-A/E shall provide administration of the Contract for Construction as set forth below and in the ~~edition of AIA Document A201~~, General Conditions, unless otherwise provided in this Agreement. The A/E shall perform all duties and obligations that are assigned to the A/E in the General Conditions ~~of~~ unless such duties or obligations on the Contract for Construction, current as part of the date of this Agreement, unless otherwise provided A/E are expressly waived in this Agreement. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.

§ 2.6.3

2.6.3 Duties, responsibilities and limitations of authority of the Architect under this Section 2.6 A/E as set forth in the Contract Documents and General Conditions shall not be restricted, modified or extended without written agreement of the Owner-Agency and A/E and Architect with consent of the Contractor, which consent will not be unreasonably withheld without written notice to all concerned parties.

§ 2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner during the administration of the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

§ 2.6.5 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect in Article 12, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

2.6.5.1 The A/E may vary periodic visits to the work, but shall average not less than one visit per week during the course of construction or as otherwise agreed by the Agency and A/E in Article 12.

2.6.5.2 Site visits shall be made by representatives of the A/E and its consultants who are knowledgeable of the Project requirements and competent in each discipline having work in current progress. These representatives shall visit the site at intervals to assure conformance with the design shown in the Contract Documents and to observe, as experienced and qualified design professionals, the progress and quality of the various aspects of the Contractor's Work.

2.6.5.3 The A/E shall submit to the Agency, at least once a month, a written report of its and its consultants' periodic visits, its findings and the status of the Project or as otherwise agreed by the Agency and A/E in Article 12.

§ 2.6.6 The Architect shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

2.6.6.1 Based on the A/E's independent evaluation of work-in-place, should the Contractor fall behind, in the A/E's opinion, in the latest approved construction schedule by more than four (4) weeks, the A/E shall so notify the OSE, the Agency and the Contractor in writing.

§ 2.6.7 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

§ 2.6.8 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 2.6.9 CERTIFICATES FOR PAYMENT

§ 2.6.9.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts.

§ 2.6.9.2 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 2.6.9.3 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 2.6.10 The Architect shall have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 2.6.11 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 2.6.12 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 2.6.13

2.6.13 ~~The Architect-A/E shall prepare Change Orders and Construction Change Directives, with supporting technical and cost documentation and data if deemed necessary by the Architect as provided in Sections 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with Agency's approval.~~

2.6.13.1 For Construction Change Directives only, when the Contractor does not provide properly itemized cost information in accordance with Article 7 of the A201, the A/E shall, for the Agency's information and as an initial basis for establishing the upper limit of compensation to the Contractor, provide the itemization and shall use the labor, material and equipment unit costs as listed in the most current issue of the "Means Construction Cost Data" series of cost guides, adjusted for local cost conditions. The A/E's effort required to prepare the cost itemization shall be considered as an Additional Service.

2.6.13.2 ~~When the Contract Documents, and may authorize A/E deems it necessary, it is only authorized to direct minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents.~~

§ 2.6.14 The Architect and its Consultants shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

2.6.14.1 The A/E, upon notification by the Contractor, shall coordinate with the Agency and the OSE the dates of the Substantial Completion and Final Completion Inspections.

2.6.14.2 The A/E shall provide one Substantial Completion Inspection, and one Final Completion Inspection. Where projects have been designed for phased completion, the A/E shall provide a Substantial Completion Inspection and Final Completion Inspection for each phase of the Project. If additional inspections are required, payment to the A/E shall be in accordance with Paragraph 11.2 and charged to the Contractor.

2.6.14.3 The A/E shall prepare, from Contractor supplied-information, and provide to the Agency a set of reproducible Record Plans showing all significant changes in the work made during construction as required by the Manual. Plans shall be stamped as "Record Plans" This set of reproducible documents shall be in addition to computer media plans (diskettes, tapes, etc.) that may be required in Paragraph 12.5.

§ 2.6.15 The Architect shall interpret and decide matters concerning performance of the Owner and Contractor under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

~~Unless otherwise agreed upon by the parties, the A/E's decisions on all requests shall be rendered within fourteen (14) days of receipt by the A/E.~~

§ 2.6.16 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

§ 2.6.17 The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 2.6.18 ~~The Architect's A/E's initial decisions on all claims, disputes or other matters in question between the Owner Agency and Contractor, except for those relating to aesthetic effect as provided in Section 2.6.17, Contractor shall be subject to mediation and arbitration as provided in this Agreement and in rendered within fourteen (14) days of receipt by the Contract Documents A/E, unless otherwise agreed.~~

2.6.19 WARRANTY INSPECTION. As part of the Basic Services provided by the A/E, during the tenth (10th) month after the Date(s) of Substantial Completion, the A/E shall visit the Project to review the Work and shall prepare a report to be issued to the Agency, the OSE and, at the Agency's direction, to the Contractor, indicating outstanding work to be corrected and warranty issues to be addressed by the Contractor. The A/E shall, as an Additional Service, assist the Agency in taking necessary action to see that the deficiencies are corrected.

ARTICLE 3 ADDITIONAL SERVICES

§ 3.1 GENERAL

~~§ 3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Sections 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Section 3.3 are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner prior to commencing such services. If the Owner deems that such services described under Section 3.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services.~~

3.1.1 Additional services shall be defined as services required for the Project that are not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural and engineering practice. The services described under paragraphs 3.2, 3.3, 3.4 shall only be provided if authorized by the Agency.

3.1.2 The A/E shall provide, upon request by the Agency, the services of consultants for the Project other than those provided as a part of Basic Services.

§ 3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

3.2.1 If more extensive representation at the site than is described in Section 2.6.5 is required, the Architect shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

~~§ 3.2.2~~

~~**3.2.2** Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as agreed A/E after approval by the Owner and Architect. Agency. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in determined by the edition of AIA Document B352 current Agency as of required by the date of this Agreement, unless otherwise agreed Project.~~

3.2.3 Through the presence at the site of such Project Representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement.

§ 3.3 CONTINGENT ADDITIONAL SERVICES

3.3.1 Making revisions in drawings, specifications or other documents when such revisions are:

- .1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
- .2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
- .3 due to changes required as a result of the Owner's failure to render decisions in a timely manner.

3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Section 5.2.5.

3.3.3 Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives.

3.3.4 Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

§ 3.3.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

§ 3.3.6 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

§ 3.3.7 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work.

§ 3.3.8 Providing services in connection with a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto.

§ 3.3.9 Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

§ 3.4 OPTIONAL ADDITIONAL SERVICES

~~§ 3.4.1 Providing analyses of the Owner's needs and programming the requirements of the Project.~~

3.4.1 Providing analysis of the owner's needs which may go beyond the services provided in the A/E's basic services as described in Subparagraph 2.2.1 and 2.2.3 and shall include:

3.4.1.1 Pre-design services

3.4.1.2 Programming services

§ 3.4.2 Providing financial feasibility or other special studies.

§ 3.4.3 Providing planning surveys, site evaluations or comparative studies of prospective sites.

§ 3.4.4 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

§ 3.4.5 Providing services relative to future facilities, systems and equipment.

§ 3.4.6 Providing services to investigate existing conditions or facilities or to make measured drawings thereof.

§ 3.4.7 Providing services to verify the accuracy of drawings or other information furnished by the Owner.

§ 3.4.8 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

§ 3.4.9 Providing services in connection with the work of a construction manager or separate consultants retained by the Owner.

§ 3.4.10 Providing detailed estimates of Construction Cost.

§ 3.4.11 Providing detailed quantity surveys or inventories of material, equipment and labor.

§ 3.4.12 Providing analyses of owning and operating costs.

§ 3.4.13 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

§ 3.4.14 Providing services for planning tenant or rental spaces.

§ 3.4.15 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

~~§ 3.4.16 Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked up prints, drawings and other data furnished by the Contractor to the Architect.~~

~~3.4.16 Providing assistance and services to the agency, beyond basic services, for taking additional action to determine deficiencies are corrected at the time of Warranty Inspection and Close-out of the Project.~~

§ 3.4.17 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

§ 3.4.18 Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work.

~~§ 3.4.19 Providing services of consultants for other than architectural, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.~~

~~3.4.19 Providing services of consultant for other than architectural, structural, mechanical, electrical and normal civil engineering (as defined and negotiated by the Agency and the A/E per paragraph 2.1.1.15) of the project as part of the Basic Services.~~

§ 3.4.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 The Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. The Owner shall furnish to the Architect, within 15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 4.2 The Owner shall establish and periodically update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

~~4.2.1 The Agency shall review the documents and the Estimate of Construction Cost for each phase (Schematic, Design Development, Construction and Bid Documents) and shall submit a copy of its written approval to the A/E and OSE.~~

§ 4.3 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such designated representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 4.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.5 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing

values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.

§ 4.6 The Owner shall furnish the services of consultants other than those designated in Section 4.5 when such services are requested by the Architect and are reasonably required by the scope of the Project.

§ 4.7 The Owner shall furnish structural, mechanical, and chemical tests; tests for air and water pollution; tests for hazardous materials; and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

§ 4.8 The Owner shall furnish all legal, accounting and insurance services that may be necessary at any time for the Project to meet the Owner's needs and interests. Such services shall include auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

§ 4.9 The services, information, surveys and reports required by Sections 4.4 through 4.8 shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof. Such reliance requires that the A/E shall review the information provided by the Agency and shall give prompt and timely notice to the Agency of any apparent deficiencies or inconsistencies in the information furnished by the Agency.

§ 4.10 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service. This includes both the work of the A/E and the Contract Documents. Such notice shall set forth with as much specificity as possible the actions required of the A/E to remedy the fault or defect.

ARTICLE 5 CONSTRUCTION COST

§ 5.1 DEFINITION

§ 5.1.1 ~~The Construction Cost shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.~~

5.1.1 The Estimate of Construction Cost and Construction Budget shall as defined in Paragraph 12.9.

~~§ 5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.~~

5.1.2 The Estimate of Construction Cost and Construction Budget shall include the elements of cost, including appropriate contingencies, as required by the Project. The level of detail for any estimate prepared by the A/E shall be commensurate with the degree of design completion and shall be correlated with the A/E's drawings and specifications.

§ 5.1.3 Construction Cost does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner as provided in Article 4.

§ 5.2 RESPONSIBILITY FOR CONSTRUCTION COST

§ 5.2.1 ~~Evaluations of the Owner's Project budget, the preliminary estimate, Agency's Construction Budget and all Estimates of Construction Cost and detailed estimates of Construction Cost, if any, Time prepared by the Architect, A/E represent the Architect's A/E's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated~~

prices will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect.

§ 5.2.2 No fixed limit

5.2.2 Fixed Limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment approved Estimate of a Project budget, unless such fixed limit has been agreed upon Construction Cost included in writing and signed by the parties hereto. If such a fixed limit has been established, the Subparagraph 2.4.5. The Architect shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary Bids to adjust the Construction Cost to the fixed limit. Fixed limits, if any, limits shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

§ 5.2.3 5.2.3 If the Bidding or Negotiation Phase has not commenced within 90-ninety (90) days after the Architect submits Agency and OSE have approved the Construction Documents to Bid Documents, the Owner, any Project budget or fixed limit Estimate of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry-industry between the date of approval of the Bid Documents and the date the Project is advertised.

§ 5.2.4 5.2.4 If a fixed limit the Estimate of Construction Cost (adjusted as provided in Section 5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal, bid, the Owner Agency shall:

.1 give written approval of **5.2.4.1** abandon the project and terminate the contract in accordance with Article 8; or,

5.2.4.2 obtain an increase in such fixed limit; Project funding; or,

5.2.4.3 authorize negotiations with the lowest bona fide bidder; or

5.2.4.4 cooperate with the A/E **.2** authorize rebidding or renegotiating of the Project within a reasonable time;

.3 terminate in accordance with Section 8.5; or revising the Project scope for the purpose of rebidding.

.4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

§ 5.2.5 5.2.5 If the Owner Agency chooses to proceed under Section Clause 5.2.4.4, the Architect, without additional compensation, A/E shall modify the documents for which the Architect is responsible under this Agreement Bidding Documents as necessary to comply with permit rebidding. The modification, including the fixed limit, if established as a condition costs of this Agreement. The modification additional printing, advertising and distribution of such documents the revised Bidding Documents without cost to the Owner Agency shall be the limit of the Architect's A/E's responsibility under this Section 5.2.5-Subparagraph 5.2.5, unless otherwise provided in this Agreement. The A/E shall provide these services at no cost to the Agency, provided, however, the A/E shall not be required to perform such additional services at no cost to the Agency if the unfavorable estimate is the result of conditions beyond the A/E's reasonable control. The Architect A/E shall be entitled to compensation in accordance with this Agreement for all services acceptably performed whether or not the Construction Phase is commenced.

ARTICLE 6 USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

§ 6.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

§ 6.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

§ 6.2

Upon execution of the Agreement, the A/E grants to the Agency a nonexclusive license to reproduce the A/E's Instruments of Service solely for the purposes of constructing, using and maintaining the Project, and for expanding the Project, correcting any deficiencies, or making any renovations, modifications or repairs to the Project. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement.

§ 6.3 Except for the licenses granted in Section 6.2, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. However, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Section 6.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Owner shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner obtains the prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 6.4 Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

ARTICLE 7 DISPUTE RESOLUTION

§ 7.1 MEDIATION

§ 7.1.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

~~§ 7.1.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.~~

~~§ 7.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

§ 7.2 ARBITRATION

~~§ 7.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Section 7.1.~~

~~§ 7.2.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.~~

~~§ 7.2.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.~~

~~§ 7.2.4 No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 7.2.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

§ 7.3 CLAIMS FOR CONSEQUENTIAL DAMAGES

~~The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 8.~~

ARTICLE 7 CONTRACT CONTROVERSY RESOLUTION

~~7.1 A/E consents to be governed by §11-35-4230 of the SC Code of Laws, as amended, and agrees that §11-35-4230 applies to and governs the Agreement. A/E waives any objection it may have now or hereafter to the administrative process required by §11-35-4230. To the extent that §11-35-4230, by its own terms, does not govern a claim or controversy arising out of or relating to the Agreement, A/E agrees that any suit, action or proceeding arising out of or relating to the Agreement shall be instituted and maintained only in a state or federal court located in~~

Richland County, State of South Carolina. Notwithstanding any other agreement between A/E and the State, the Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, and any suit, action or proceeding arising out of or relating to the Agreement shall be governed by the laws of the State of South Carolina. A/E agrees that any act by the State regarding the Agreement is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the phrase, "the State" includes any governmental entity transacting business with the A/E pursuant to the Agreement and the South Carolina Budget & Control Board.

7.2 CLAIMS FOR LISTED DAMAGES

7.2.1 Waiver of Claims Between A/E and Agency. Notwithstanding any other provision of the Agreement, but subject to a duty of good faith and fair dealing, the A/E and Agency waive Listed Damages for claims, disputes or other matters in question arising out of or relating to this Agreement. The Listed Damages are damages incurred for principal office expenses and overhead (including, but not limited to, the compensation of personnel stationed there, rent, utilities, and office equipment), for losses of financing, business and reputation, for loss of profit other than anticipated profits arising directly from the Work, and for attorney's fees, insurance, and interest (excluding post-judgment).

7.2.2 Waiver of A/E Claims Against the Contractor. Notwithstanding any other provision of this Agreement, but subject to a duty of good faith and fair dealing, the A/E waives all claims against both the Contractor and any of the Contractor's subcontractors (at any tier) for Listed Damages arising out of or relating to this Contract. The Listed Damages are damages incurred for principal office expenses and overhead (including, but not limited to, the compensation of personnel stationed there, rent, utilities, and office equipment), for losses of financing, business and reputation, for loss of profit other than anticipated profits arising directly from the Work, and for attorney's fees, insurance, and interest (excluding post-judgment).

ARTICLE 8 TERMINATION OR SUSPENSION

§ 8.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect-A/E elects to suspend services, prior to suspension of services, the Architect-A/E shall give ~~seven days'~~ written notice to the Agency. Unless payment in full for undisputed amounts is received by the Owner. In A/E within twenty-one (21) days of the event date of a suspension receipt by the Agency of services, the Architect shall have no liability to written notice, the Owner for delay or damage caused the Owner because of such suspension of services. shall take effect without further notice.

Before resuming services, services following a suspension for reasons of nonpayment, the Architect-A/E shall be paid be paid all undisputed sums due prior to the suspension and any direct expenses incurred in the interruption and resumption of the Architect's A/E's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 8.2 If the Project is suspended by the Owner-Agency for any reason for more than 30 thirty (30) consecutive days, the Architect-A/E shall be compensated for acceptable services performed prior to the notice of such suspension. When

8.2.1 If the Project is resumed after an interruption of more than thirty (30) but less than one hundred eighty (180) days, the A/E's time schedules shall be equitably adjusted.

8.2.2 If the Project is resumed, resumed after an interruption of one hundred eighty (180) days or more, the Architect A/E's compensation shall be compensated equitably adjusted to provide for expenses incurred in resuming the interruption and resumption of the Architect's A/E's services. The Architect's A/E's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 8.3 If the Project is suspended or the Architect's services are suspended for more than 90, one hundred eighty (180) consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

8.3.1 This Contract may be terminated by the Agency with not less than seven (7) day's written notice to the A/E that the Project is permanently abandoned.

§ 8.4 This Agreement may be terminated by either party upon not less than ~~seven~~ twenty-one (21) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. The Notice of Termination may give the other party a stated period of time within which to remedy its breach of contract, provided such time allowed for remedy shall be no less than thirty (30) days and no more than sixty (60) days from the receipt of the notice of termination. This notice shall specify the initiating party's reason(s) for the termination and shall state with specificity the means by which the other party may cure the asserted grievance.

8.4.1 If termination is the fault of the A/E, compensation shall be negotiated.

§ 8.5 This Agreement may be terminated by the Owner upon not less than seven ~~twenty-one~~ (21) days' written notice to the Architect for the Owner's convenience and without cause.

~~§ 8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 8.7.~~

8.6 Payment for contract termination not the fault of the A/E shall be made in proportion to acceptable services performed prior to the notice of termination. When the basis of compensation is a percentage of construction cost as established in Paragraph 11.2; payment shall be based on the most recent Agency Construction Budget. In addition, the A/E shall be compensated for all Reimbursable Expenses incurred prior to the notice of termination in accordance with Paragraph 11.3.

§ 8.7 Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

ARTICLE 9 MISCELLANEOUS PROVISIONS

~~§ 9.1 This Agreement shall be governed by the law of the principal place of business of the Architect, unless otherwise provided in Article 12.~~

~~§ 9.2 Terms~~ 9.2 Unless otherwise stated, terms in this the Agreement shall have the same meaning as those in the 1997 edition of the AIA Document document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement supplemented.

~~§ 9.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.~~

9.3 See §11-35-4230 of the SC Code of Laws, 1976, as amended.

§ 9.4 To the extent damages are covered by property insurance during construction, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 9.5 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.

§ 9.6 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 9.7 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 9.8 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

§ 9.9 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 9.10 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 9.11 Any changes to the scope of work, Article 11 or Article 12 shall be requested on the SE-260, "Professional Services Contract Amendment Request".

§ 9.12 All documents, transmittals, products and plans shall be identified with the Agency name and the state project name and number.

ARTICLE 10 PAYMENTS TO THE ARCHITECT

§ 10.1 DIRECT PERSONNEL EXPENSE

Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 10.2 REIMBURSABLE EXPENSES

§ 10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses:

- ~~1~~ — transportation in connection with the Project, authorized out of town travel and subsistence, and electronic communications;
- ~~2~~ — fees paid for securing approval of authorities having jurisdiction over the Project;
- ~~3~~ — reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- ~~4~~ — expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- ~~5~~ — renderings,

10.1 GENERAL

10.1.1 Compensation as described in Article 11 shall not be exceeded without prior written approval by the Agency and if required, by the OSE.

10.1.2 The hourly rates for each classification and/or category of employee shall include all expenses related to the individual including overhead and profit. The A/E shall provide justification of any hourly rate when requested by the Agency or the OSE.

10.1.3 The rates and multiples set forth in Paragraphs 11.2 and 11.3 shall be the rates and multiples used for the duration of the Contract, provided, however, that the rates and multiples may be adjusted, with Agency approval.

10.1.4 Invoices for services and reimbursable expenses shall be submitted at the completion of phases or monthly with documentation to substantiate all Additional Services and Reimbursable Expenses. Each invoice shall be project specific.

10.1.5 Progress payments shall be made by the Agency to the A/E on undisputed amounts within twenty-one (21) days of receipt of the A/E's invoice. The A/E shall make progress payments to the consultants within seven (7) days of receipt by the A/E of each payment from the Agency.

10.1.6 The A/E shall maintain records of Reimbursable Expenses and Additional Services Expenses, which shall be available to the Agency or the Agency's authorized representative at mutually convenient times for audit.

10.1.7 Responsibility for costs of errors and omissions by the A/E in the Contract Documents that result in Change Order(s) shall be determined in accordance with **Chapter 4 of the Manual**.

10.1.8 No deductions shall be made from the A/E's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work, other than those for which the Agency has reasonable cause, consistent with §29-6-40 of the SC Code of Laws, as amended, to determine A/E to be liable, provided that due notice to the A/E has been given pursuant to Paragraph 4.10.

10.2 PROJECT EXPENSES

NOTE: THE AGENCY HAS THE OPTION TO CHOOSE REIMBURSABLE EXPENSES, A LUMP SUM EXPENSE OR COMBINATIONS AS NECESSARY IN THE BEST INTEREST OF THE AGENCY.

10.2.1 REIMBURSABLE EXPENSES are actual expenses incurred by the A/E in the interest of the Project. Reimbursable expenses shall not exceed the amount indicated in Paragraph 11.3.1.1 without prior approval by the Agency in the form of an amendment to the Agreement.

10.2.2 A LUMP SUM EXPENSE is a negotiated sum of estimated project expenses that may be incurred by the A/E during the duration of the A/E contract. A Lump Sum Expense is an amount negotiated between the agency and A/E in place of reimbursable expenses. A Lump Sum Expense may include but are not limited to the following:

10.2.3 Reimbursable expenses and/or a Lump Sum Expense may include the following:

10.2.3.1 Long distance telecommunications expenses, postage, and agency approved special delivery services (e.g., Federal Express, Express Mail, UPS, etc.).

10.2.3.2 Travel from the A/E's office to the Project site (or Agency).

10.2.3.3 Travel for the interest of the project for programming purposes and investigative design purposes.

10.2.3.4 Defined in-house printing depending on the complexity of the project as negotiated by the Agency and the A/E.

10.2.3.5 Overtime work expense requiring higher than regular rates, if authorized at the time of negotiations by the agency.

10.2.3.6 Renderings, models and mock-ups requested by the Owner; agency.

~~.6 — expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;~~

~~.7 — reimbursable expenses as designated in Article 12;~~10.2.3.7 Additional insurance coverage or limits, including professional liability insurance, requested by the agency in excess of the minimum coverage or limits required to be carried by the A/E in Article 12, paragraphs 12.6 and 12.7, when requested by the Agency.

~~.8 — other similar direct Project related expenditures.~~

10.2.3.8 Fees and costs paid by the A/E to obtain permits required by authorities having jurisdiction over the project.

§ 10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

§ 10.3.1 An initial payment as set forth in Section 11.1 is the minimum payment under this Agreement.

10.3 PAYMENTS FOR BASIC SERVICES

~~§ 10.3.2 Subsequent payments~~10.3.1 Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth service as established in Section 11.2.2-Subparagraph 11.1.2.

~~§ 10.3.3 If and to the extent that the time initially established in Section 11.5.1 of this Agreement is exceeded or extended through no fault of the Architect, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Section 11.3.2.~~

10.3.2 When the A/E's initial compensation under this Agreement is based on a Percentage of Construction Cost, and after construction contract award, this Agreement shall be converted to a lump sum fee equal to the percentage times the Construction Contract Award amount, using the SE-260, "Professional Services Contract Amendment Request".

~~§ 10.3.4~~10.3.3 When compensation is based on a percentage-Percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those non-constructed portions of the Project shall be payable to the extent services are performed on those portions, performed, in accordance with the schedule set forth in Section 11.2.2, Subparagraph 11.1.2, based on (1) on:

10.3.3.1 the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, bid;

10.3.3.2 the final negotiated amount; or,

10.3.3.3 the most recent approved Agency Construction Budget for such portions of the Project, if a bid is not received.

10.3.4 If the contract time for Final Completion established in the Construction Contract is exceeded by more than thirty (30) days through no fault of the A/E, compensation for Basic Services performed by principals, employees and professional consultants required to complete the administration of the Construction Contract beyond the 30th day shall be in accordance with Paragraph 1 1.2.

10.3.5 If a Construction Change Order or Change Directive is generated:

10.3.5.1 in response to a request from the Agency, including Agency-approved suggestions from the A/E or the Contractor, then the A/E's cost of generating and processing the request shall be paid either in accordance with Paragraph 11.2, or based on the percentage of construction cost, as determined by the Agency.

10.3.5.2 in response to a request from the Contractor that is ultimately rejected by the Agency, then the A/E's cost of evaluating and processing the request shall be paid in accordance with Paragraph 11.2 and shall be the responsibility of the Contractor.

10.3.5.3 in response to a proposal from the A/E to correct an error and/or omission on the part of the A/E, then the required documentation shall be generated and processed at no additional cost to the Agency in accordance with Subparagraph 10.1.7.

10.4 PAYMENTS FOR ADDITIONAL SERVICES

10.4.1 Payments for Additional Services included in this Contract shall be made in proportion to services performed and expenses incurred.

10.4.2 Additional compensation shall not be allowed for any services of the A/E in connection with:

10.4.2.1 Basic Services described in Article 2;

10.4.2.2 The Contractor's Warranty Period Inspection;

10.4.2.3 Contract administration during the ~~most recent preliminary estimate extension of the Construction Cost or detailed estimate of Construction Cost for such portions of Contract time caused by the Project A/E;~~

10.4.2.4 Contract administration during the first thirty (30) days of the extension of the Construction Contract Time not caused by the A/E; or

10.4.2.5 Correction of errors or omissions by the A/E.

10.5 PAYMENTS FOR REIMBURSABLE EXPENSES

10.5.1 Payments for Reimbursable Expenses shall be in full for the expenditures during the period for the Pay Request.

10.5.2 The A/E shall submit documentation including receipts, invoices and other substantiating data with the Payment Request

§ 10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

10.7 PAYMENTS FOR LUMP SUM EXPENSES

§ 10.5 PAYMENTS WITHHELD

No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

10.7.1 Payments for Lump Sum Expenses shall be as agreed upon during the negotiations for the expenses (monthly, quarterly, at the completion of each phase, or at time of completion of multiple phases of the services provided).

§ 10.6 ARCHITECT'S ACCOUNTING RECORDS

Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

10.7.2 The A/E is not required to include in the invoicing receipts or other documentation to substantiate the lump sum expenses at the time of each billing.

ARTICLE 11 BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

11.1 COMPENSATION FOR BASIC SERVICES

11.1.1 Compensation for Basic Services as described in Article 2 shall be as follows (See Chapter 4 of the Manual): (Check box for the method of compensation to be used and insert the stipulated sum or percentage.)

Agency Construction Budget, including Construction Contingency:

§ 11.1.1 An Initial Payment of (\$) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

☐ Stipulated Lump Sum of: § 11.2

BASIC COMPENSATION

§ 11.2.1 For Basic Services, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows:

(Insert basis of compensation, including stipulated sums, multiples or percentages, and identify phases to which particular methods of compensation apply, if necessary.)

§ 11.2.2 Where compensation is based on a stipulated sum or percentage

☐ Percentage of Construction Cost, progress Contract Award:

Initial Basis of Compensation for Basic Services:

(Percent times Budget)

11.1.2 Progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable: (See Chapter 4 of the Manual for suggested phase percentages)

(Insert additional phases as appropriate.)

Schematic Design (percent):

Design Development (percent):

Construction Documents (percent):

Bidding and Award (percent):

Construction Administration (percent):

Project Closeout (percent):

(as defined in Chapter 7, paragraphs 7.2, 7.25 and 7.26 of the OSE Manual)

Schematic Design Phase:		percent (%)
Design Development Phase:		percent (%)
Construction Documents Phase:		percent (%)
Bidding or Negotiation Phase:		percent (%)
Construction Phase:		percent (%)
Total Basic Compensation	one hundred	percent (100.00	%)
Total Basic Compensation				

11.2 COMPENSATION FOR ADDITIONAL SERVICES § 11.3 COMPENSATION FOR ADDITIONAL SERVICES

§ 11.3.1 For Project Representation Beyond Basic Services, as described in Section 3.2, compensation shall be computed as follows:

11.2.1 For additional services of the A/E to be included in this Contract, compensation shall be as follows: **§ 11.3.2**

For Additional Services of the Architect, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in Section 3.2, and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, compensation shall be computed as follows:

(Insert basis of compensation, including or attach lump sum fee or hourly rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, employees.)

11.2.2 Description of Additional Services. (Reference attachments if necessary.)

11.2.3 For Additional Services of Consultants, use a multiple of _____ times the amounts billed to the A/E for such services. (Insert multiple not to exceed 1.1)

11.2.3.1 It is understood and agreed by the parties to this Agreement that the multiple listed in this Subparagraph shall be considered to include all costs of the A/E relating to the provision of the additional services of consultants, including, but not limited to, field and office supervision, general overhead allocations and profit.

11.3 PROJECT EXPENSES

11.3.1 For **REIMBURSABLE EXPENSES**, as described in Article 10 and listed in Article 12, use a multiple of _____ times the expenses incurred by the A/E in the interest of the Project.
(Insert multiple not to exceed 1.1)

11.3.1.1 Total reimbursable expenses shall not exceed:
(Insert maximum dollar amount)

11.3.1.2 Description of Reimbursable Expenses not included in Paragraph 10.2.3. (Reference attachments if necessary.)

A diagram consisting of a vertical line on the left. From the upper portion of this line, a horizontal line extends to the right. From the lower portion of the vertical line, another horizontal line extends to the right. The two horizontal lines are parallel and do not overlap.

11.3.2 For a **LUMP SUM EXPENSE**, as described in Article 10 and listed in Article 12 use the total **LUMP SUM EXPENSE** not to exceed: _____

11.3.2.1 A Lump Sum Expense shall be paid on a basis of (monthly, quarterly, completion of phase, time of completion):

11.3.2.2 Description of the expenses included in the Lump Sum Expense not included in Paragraph 10.2.3. (Reference attachments if required. Identify specific services to which particular methods necessary.):

11.5 ADDITIONAL PROVISIONS

11.5.3 Projects that are delayed or extended beyond the Agency and A/E agreed upon time schedule may have the rates set forth for Additional Services adjusted pursuant to negotiations between the agency and A/E.

ARTICLE 12 OTHER CONDITIONS OR SERVICES

(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)

12.1 AIA Document B151-1997, "Abbreviated Standard Form of Agreement Between Owner and Architect," is hereby modified by addition to, change of, and/or deletion from existing clauses and/or insertion of compensation apply, additional clauses as follows:

12.2 Contract Schedule and Time Limitations. *(Reference attachments if necessary)*

[illegible]

12.3 List of Consultants by Discipline and Name of Person or Firm as presented to the Selection Committee.
(Attach a Project Organizational Chart for the Project Team)

12.4 List the key Project Team Members assigned to this Project by Name, Discipline and Name of Person or Firm. (Reference attachments if necessary.)

12.5 Additional Record Plans Requirements. (Reference attachments if necessary.)

12.6 GENERAL INSURANCE. The A/E shall maintain all forms of insurance required by law in the State of South Carolina. The A/E shall also maintain insurance coverage for commercial general liability, automobile liability, and workers' compensation by a carrier satisfactory to the Agency, which carrier shall be licensed to provide such coverage in the State of South Carolina, in the forms and amounts listed below. Such amounts shall be satisfactory to the Agency. The A/E shall ensure that all Consultants engaged or employed by the A/E carry and maintain similar insurance. The A/E and his Consultants shall submit proof of such insurance to the Agency at time of Contract Award and at any time when a material change in coverage, carriers, or underwriters occurs. The maintenance in full current force and effect of such coverage shall be a condition precedent to the Agency's obligation to pay under this Agreement. The insurance policies shall incorporate a provision requiring written notice to the Agency at least thirty

(30) days prior to any cancellation, non renewal, or material modification of the policies.

COMMERCIAL GENERAL LIABILITY: \$ 1,000,000

(a) General Aggregate (per project) \$ 1,000,000

(b) Personal and Advertising Injury \$ 1,000,000

(c) Each Occurrence \$ 1,000,000

(d) Medical Expenses (Any one Person) \$ 5,000

BUSINESS AUTO LIABILITY (including All Owned, non -Owned, and Hired Vehicles):

(a) Combined Single Limit \$ 1,000,000

OR

(b) Bodily Injury & Property Damage (each) \$ 750,000

WORKERS COMPENSATION

(a) State Statutory

(b) Employer's Liability \$100,000 Per Accident

\$500,000 Disease, Policy Limit

\$100,000 Disease, Each employee

12.7 PROFESSIONAL LIABILITY INSURANCE. In addition to other insurance required by statute or 12.7 under provisions of this Agreement, the A/E and each Consultant or Joint-Venture Associate shall provide professional liability insurance, issued by an insurance carrier approved in advance by the Agency and licensed to provide such coverage in the State of South Carolina, to compensate the Agency for all negligent acts, errors and omissions by the A/E, his firm, his agents, his employees, and his Consultants arising out of this Agreement. The Architect and his Consultants and Joint-Venture Associates shall submit proof of such insurance, which shall provide a coverage amount not less than five hundred thousand dollars (\$500,000) per claim. At the discretion of the Agency higher amounts may be requested. Such higher approved amounts shall be listed in subparagraph 11.3.1.2.

12.7.1 Upon execution of this Agreement, and at every date for renewal of that policy, the A/E shall cause a Certificate of Insurance to be issued by an insurance agent licensed in the State of South Carolina. Provision of a valid Certificate of Insurance that meets the requirements of this Agreement is a condition precedent to the payment of any amounts due to the A/E by the Agency. This policy shall remain in effect for the benefit of the Agency at least through any warranty period covering the Project but in no case for less than twelve (12) months after the date of issuance of the final Certificate for Payment by the Architect. The policy shall incorporate a provision requiring written notice to the Agency at least thirty (30) days prior to any cancellation, non renewal, or reduction in the limits of the policy.

12.8 List attachments to this Contract not previously referenced, ~~§ 11.3.3 For Additional Services of Consultants,~~ including additional structural, mechanical and electrical engineering services and those provided under Section 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of () times the amounts billed to the Architect for such services.

(Identify specific types of consultants in Article 12, if required.)

any.

12.9 DEFINITIONS

12.9.1 ARCHITECT/ENGINEER OR ARCHITECT. A person or firm who performs professional services associated with the practice of architecture, professional engineering, land surveying, landscape architecture and interior design

pertaining to construction, as defined by the SC Code of Laws, as amended, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals and other related services.

12.9.1.1 Wherever the word "A/E" or "Architect" appears in the Contract between the Agency and the A/E, or herein, the intent is the Architect/Engineer with whom the Agency has a contractual agreement.

12.9.1.2 The architectural, civil, structural, mechanical, electrical and other engineering portions of the Project shall be planned and designed by or under the immediate supervision of a South Carolina licensed architects or engineers who have the requisite expertise in the particular discipline involved.

12.9.2 CONSULTANT. A person or firm contracted by or in partnership with the A/E at any tier to fulfill the terms and conditions of this Contract.

12.9.3 MANUAL. The "Manual for Planning and Execution of State Permanent Improvements -Part II" as published by the Office of State Engineer (OSE). The A/E shall be thoroughly familiar with the Manual and shall perform tasks and activities required by the Contract in accordance with the requirements and standards stated therein as appropriate to the project.

12.9.3.1 If the A/E believes that a Building Code, Manual requirement or other regulation is unclear as to meaning, the A/E shall request a written determination of the interpretation, applicable to the Project only, from the OSE or the appropriate regulatory agency having jurisdiction, and the A/E shall be entitled to rely on the written opinion, if any, it receives.

§ 11.4 REIMBURSABLE EXPENSES

For Reimbursable Expenses, as described in Section 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of () times the expenses incurred by the Architect, the Architect's employees and consultants directly related to the Project.

12.9.4 CONSTRUCTION CONTRACT AWARD. The amount of the contract between the Agency and the Contractor for this project.

§ 11.5 ADDITIONAL PROVISIONS

§ 11.5.1 If the Basic Services covered by this Agreement have not been completed within () months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Sections 10.3.3 and 11.3.2.

12.9.5 ESTIMATE OF CONSTRUCTION COST. The Estimate of Construction Cost is the estimated Construction Contract Award amount for all elements of the Project designed or specified by the A/E, adjusted to reflect local conditions at the time of bidding and the anticipated period of construction.

12.9.6 CONSTRUCTION BUDGET. The current Estimate of Construction Cost plus that portion of the Agency's total project contingency reserved for the construction ~~§ 11.5.2 Payments are due and payable () days from the date of the Architect's invoice. Amounts unpaid () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.~~

(Insert rate of interest agreed upon.)
the Project.

12.9.7 AGENCY. Wherever the word "Owner" or "Agency" appears in the B151 or herein, the intent is the State Agency with whom the A/E has a contractual agreement.

12.9.8 GENERAL CONDITIONS. The AIA document A201-1997 "General Conditions of the Construction Contract," and the "Standard Supplemental Conditions" (00811-OSE) as published by the Office of State Engineer, or other documents of similar function and intent as may be approved by the Office of State Engineer for use on specific projects.

12.10 CERTIFICATION

The undersigned certifies that the A/E listed below will provide a "Drug-Free Workplace" as that term is defined in §44-107-30 of the SC Code of Laws by complying with the requirements set forth in Title 44, Chapter 107; and the A/E agrees to this **Article 12, Other Conditions or Services**, as published by the OSE. Any exceptions or changes approved by the Agency and the OSE shall be fully delineated in an

Article 13 and attached hereto.

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

Article 13 ☐ is ☐ is not **attached. § 11.5.3** The rates and multiples set forth for Additional Services shall be adjusted in accordance with the normal salary review practices of the Architect.

(check one, as appropriate) **ARTICLE 12— OTHER CONDITIONS OR SERVICES**

(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)

STATE PROJECT NO.; - - -

This Agreement entered into as of the day and year first written above.

OWNER

(Signature)

(Printed name and title)

ARCHITECT

(Signature)

(Printed name and title)